

ASSAULT



UPON

FREEDOM OF ASSOCIATION

ASSAULT UPON FREEDOM OF ASSOCIATION

*A Study of the Southern Attack
on the
National Association for the
Advancement of Colored People*

AMERICAN JEWISH CONGRESS

15 EAST 84TH STREET

NEW YORK 28, N. Y.

May, 1957? (see page 46)

This study was prepared by the Commission on Law and Social Action, SHAD POLIER, chairman; LEO PFEFFER, director.

Acknowledgment is made to JOSEPH B. ROBISON, BENJAMIN MINTZ, and SPENCER RICH of the Commission staff for the research and writing of the study.

•

A publication of the Department of Public Affairs, WILL MASLOW, director.

GL
Gift
Lawrence Berlin
7-8-71
904916-291

FOREWORD	5
INTRODUCTION	7
THE RECORD OF THE STATES	10
Alabama	10
Arkansas	12
Florida	13
Georgia	15
Louisiana	17
Mississippi	19
North Carolina	20
South Carolina	21
Tennessee	25
Texas	25
Virginia	27
IMPLICATIONS OF THE ATTACK	30
The Methods	30
The Immediate Target: NAACP	35
The Goal: Destruction of Organized Opposition	37
ASSOCIATION IS PART OF AMERICAN DEMOCRACY	39
CONCLUSION	45

FOREWORD

ALL AMERICANS are in debt to the American Jewish Congress for the study of the "Assault upon Freedom of Association" for which I am happy to write this foreword.

In view of the great social tension, particularly in the Southern states, arising out of the Supreme Court decision ordering the desegregation of the public schools, we perhaps cannot expect universal agreement as to how quickly this decision can and should be made effective. But all Americans should be concerned with the actions being taken to liquidate the NAACP in a number of Southern states. These "legal" attempts to make it impossible for Negroes and others to associate freely to secure their rights under the law of our land are a threat to the liberties of all Americans of all races.

No one who knows the facts can blame the NAACP for the racial problems in our country or think of this organization as made up of extremists of one sort to be set opposite the extremists on the other side who make up the White Citizens Councils and the Ku Klux Klan. It is clear to anyone who is willing to read the record that the NAACP is a legitimate association which by legal means is attempting to win for colored peoples the rights which they deserve as citizens.

Certainly, too, everyone who reads this study must realize that these assaults upon the NAACP are of deep and immediate concern to all who cherish the right of freedom of association upon which our democratic society depends.

EUGENE CARSON BLAKE,
*President, National Council
of the Churches of Christ
in the United States of America*

INTRODUCTION

MORE THAN 100 YEARS AGO, AN ACUTE VISITOR TO OUR shores, Alexis de Tocqueville, observed that "the most democratic country on the face of the earth is that in which men have in our time carried to the highest perfection the art of pursuing in common the object of their common desires, and have applied this new science to the greatest number of purposes. . . . If men living in democratic countries had no right and no inclination to associate for political purposes, their independence would be in great jeopardy". (De Tocqueville, *Democracy in America*, Galaxy Edition, pp. 319-320).

Since de Tocqueville's time, our country has grown and its society has become ever more complex. Our democracy has survived and grown with our country largely because we have kept and used our freedom of association.

That freedom is under severe attack today in some of the Southern states. Since the historic decision of the United States Supreme Court in May 1954, condemning racial segregation in public schools, a number of state governments have invoked a multiplicity of devices to defeat or delay effectuation of the Court's decision.

The unhappy story of those efforts to annul the constitutional guarantee of equality has been widely told. Less attention has been given, however, to an ominous shift in the nature of the attack to a widespread assault upon the constitutional right to freedom of association, on which all of our liberties depend. That assault is motivated by the fact that the struggle against racial segregation has largely been organized and made effective by the National Association for the Advancement of Colored People (NAACP).

Today, with the ever-expanding scope of governmental activities and the complexity of modern social life, voluntary associations have become an indispensable part of the struggle to preserve

democracy against totalitarianism. Under a totalitarian government there is but one association—the state; in a democracy there are a multitude of associations. Thus, churches and synagogues are free associations of persons joining together for worship. Trade unions are associations of persons joining together for industrial advancement. Universities are associations for educational and intellectual advancement. The Elks, the Kiwanis and the Lions are associations for social and fraternal purposes. The Republican Party and the Democratic Party are associations for political purposes. The American Jewish Congress is an association of American Jews freely joining together to defend Jewish rights and promote democracy. And the NAACP is an association of Americans freely joining together to eliminate racial discrimination and segregation, which impair the rights of Negroes as citizens of the United States.

The fathers of our Bill of Rights recognized that free association of individuals for common purposes is indispensable to democratic living. Accordingly, they included in the First Amendment—the cornerstone of the Bill of Rights—a guaranty of freedom of assembly, a term universally recognized today as encompassing freedom of association.

It is the violation of this freedom that now concerns us. That concern is not affected by whether we agree or disagree with the Supreme Court's decision on desegregation, whether we favor or oppose racial integration, whether we believe desegregation should be brought about immediately or gradually, by legal action or by the educational process. The liberties of all Americans, whatever may be their views on these questions, are threatened by the widespread assault upon their specific right to associate through the NAACP.

In the following pages we recount the details of that assault. The record reveals that practically every instrumentality of law and government in the South has been used to persecute and oppress the NAACP and the citizens who constitute its membership. In the words of the late Justice Murphy speaking of another unpopular association, Jehovah's Witnesses, its members "have been harassed at every turn by the resurrection and enforcement of little used ordinances and statutes." Legal processes and procedures have been used and abused to frustrate its legitimate activities. Trumped up charges have been levelled against it. It has been compelled to expose its membership lists

and thus subject its members to the threat of physical injury and economic duress. Registration and tax laws have been invoked against it. In general, it has been the object in some Southern states of a determined effort to destroy it completely.

In the following pages we recount what is still an unfinished story. Even as those pages are being read, new devices are being contrived to carry on the campaign of attrition. Every day brings new details. Yet our picture of the situation as it exists at the present moment is enough to reveal clearly the magnitude and gravity of the threat to freedom of association in a great part of the American nation.

THE RECORD OF THE STATES

Alabama

IN THE SPRING OF 1956, THE ALABAMA ATTORNEY GENERAL started a lawsuit against the NAACP, charging it, as an out-of-state corporation, with failure to register a copy of its Certificate of Incorporation and other information required by Alabama law. He also charged that the NAACP had broken various laws by employing and subsidizing Autherine Lucy and Polly Meyers Hudson to test the segregation policies of the University of Alabama and by organizing, financing and supporting the "illegal" Montgomery bus boycott. (This is a theme we shall hear again. The Southern states have repeatedly acted as though an attack on their segregation laws is "illegal." This, of course, is a form of flouting the Supreme Court's decision declaring that the school segregation laws of the South are invalid.)

Without a hearing, Judge Walter B. Jones issued a temporary injunction and restraining order on June 1, 1956, prohibiting the NAACP from conducting any business, from maintaining offices, organizing chapters, soliciting members or dues or filing any document qualifying it to do business in Alabama.

That order is still in effect. A series of involved legal maneuvers has converted it into what is in essence a permanent ban on NAACP activities. These maneuvers began with a demand by Attorney General John Patterson that the NAACP produce certain records for use in determining whether the temporary injunction should become permanent. The records demanded included copies of NAACP charters in Alabama; a list of members and those authorized to solicit membership and funds; records of bank transactions and property owned; a list of employees and agents; and records of correspondence concerning the Federal court suit in Montgomery which resulted in an order holding bus segregation unconstitutional.

The state's request was granted by Judge Jones. The NAACP, however, refused to produce the records, claiming they had no

bearing on the case at hand and would be used only to expose members of the organization and subject them to economic pressures and threats.

Judge Jones thereupon found the NAACP guilty of contempt and fined it \$10,000, adding that the fine would be increased to \$100,000 if the records were not produced within five days. An NAACP offer to hand over some of its records but not the membership lists was refused by the court. The \$100,000 fine became effective on July 30, 1956.

After appeals to higher state courts against both the fine and the order for the records were denied, the United States Supreme Court, on May 27, 1957, agreed to hear the case. Meanwhile, the "temporary" injunction against all NAACP activity remains in force. If the Supreme Court ultimately upholds the Alabama courts, the "temporary" injunction will go on indefinitely, because, until the NAACP pays the \$100,000 and purges the contempt by producing its records, it may not appear in court to ask that the injunction be ended.

Because of its success in its courts, the State of Alabama has found no need to enact new laws containing wholesale prohibitions of NAACP activity, as have some of the states named below. Nevertheless, its legislature has passed a number of bills applying to selected rural counties where the Negro population is proportionately high. In 1955, it enacted a law requiring any organization soliciting money in Wilcox County to pay a \$200 license fee, \$50 for each solicitor and \$5 for each person it enrolls into the organization. Representative Sam Nettles, who introduced the bill, made clear his intention to impose thought control: "Without such a proposal," he said, "it would be very easy for the NAACP to slip into Wilcox County and teach the Negroes undesirable ideas."

In 1956, the legislature provided that organizations that collect dues may not solicit members in Marengo County without registering. Special statutes for Macon and Marengo Counties in the same year stifle any protest by teachers by allowing boards of education to remove any teacher in the public school system "at any time such action is deemed necessary to promote the best interests of the schools under the Boards' jurisdiction." The action of the local board is final; there is no redress in the courts. All of these laws were enacted without the approval of Governor James Folsom. Several additional measures were vetoed by Gov-

ernor Folsom or killed by the legislature itself. But there was little need for them.

Court orders compelling exposure of NAACP records have also been sought in suits brought by individuals. Four men arrested during the riots over Autherine Lucy's admission to Alabama University brought damage suits totalling \$4 million against the NAACP, charging that it had helped Miss Lucy to obtain admission and thereby encouraged the riots. One of the complainants demanded that the NAACP provide him with a list of its chapters in Jefferson County and the names and addresses of their officers and members. NAACP responded that "such information in the hands of the plaintiff would result in injury to members and officers" and refused the information.

Arkansas

A small number of Arkansas school districts undertook desegregation of their classes shortly after the Supreme Court's 1954 decision. Since then, unfortunately, the trend has been steadily adverse to compliance. At the November 1956 general elections, the voters approved a number of anti-integration proposals including a resolution that pledged the state "to resist to the utmost all illegal encroachments on its domestic interests." When the legislature convened in January 1957, it undertook to carry out the mandate of the November election. Among the bills passed by the legislature and signed by Governor Orval E. Faubus in February were two designed to frustrate anti-segregation activity.

One bill established a State Sovereignty Commission, headed by the governor. The Commission was directed to "resist the usurpation" of states' rights by the Federal government, to give assistance to school districts in litigation and other matters "relating to the commingling of races" and to collect information concerning "developments constituting deliberate, palpable and dangerous invasions" of the rights reserved to the state by the Constitution. The Commission was given wide subpoena and other investigation powers. The breadth of its mandate prompted Winthrop Rockefeller, whom Governor Faubus had appointed as chairman of the Arkansas Industrial Development Commission, to warn that it "would set up what you might call an Arkansas gestapo. No organization would be safe from embarrassment of an investigation, and behind closed doors, too."

The other new law requires registration by and periodic reports from all persons and organizations who (a) support Federal legislation that would affect the operation of Arkansas school districts; (b) work for the defeat of Arkansas legislation designed to preserve states' rights; (c) solicit plaintiffs for lawsuits involving the operation of state institutions, particularly the public schools; (d) promote "integration of races in the public schools" contrary to the desire of the patrons of the schools or (e) give legal aid to "such negroes (sic) as may be involved . . . in . . . litigation involving their admission into any public school" in the state.

Persons and organizations that come within these terms must comply with a number of requirements. Thus, they must keep records of all contributions and expenditures made in any amount, showing the name and address of the contributor or payee. They must get receipted bills for all expenditures and keep them for two years. They must make quarterly reports on these receipts and expenditures to the Sovereignty Commission.

Governor Faubus made it clear that the NAACP was the target of this legislation, saying that it would make it possible for the state to outlaw that organization if it exceeded its functions as a non-profit group. Nevertheless, the Arkansas Christian Missionary Society warned that the new law requires registration by that organization, as well as other religious groups opposed to segregation. This, it said, would be a violation of the principle of separation of church and state.

Florida

At a special session of its legislature in 1956, Florida adopted legislation giving the governor broad powers to "promulgate and enforce such emergency rules and regulations as are necessary to prevent, control or quell violence, threatened or actual, during any emergency lawfully declared by him to exist." The governor was empowered to order individuals or corporations "to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of society."

In practical terms, this statute enables the governor to declare an emergency if any effort is made to bring about integration of a school or if the NAACP seeks to hold a peaceful public meeting. He would then have power to disband or cancel the meeting or order the integration stopped.

However, the governor's power to act under the statute is not limited to NAACP activity and efforts to obtain integration. Its terms are so sweeping that the governor can halt any organizational activity, including union meetings and organizing campaigns.

The 1956 legislature was doubtful whether this law would be enough to achieve the legislature's purposes. Accordingly it established a legislative committee to conduct investigations and to recommend to the next session of the legislature "corrective legislation" to curb abuses against the "peace and dignity of the state." The committee was directed to examine "all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well being and orderly pursuit of their personal and business activities by the majority of the citizens of this state."

The committee has been holding hearings at which NAACP representatives have been closely questioned. It has attempted to show, among other things, the influence of "outside elements" in the Tallahassee bus boycott and the role of the NAACP in suits by Negroes to end segregation in public schools and the University of Florida. (When one NAACP representative who was questioned about school desegregation petitions referred to the constitutional right to petition for the redress of grievances, the committee counsel interrupted, saying, "We didn't ask for that and don't want it in the record." The committee ordered the remark stricken from the record.)

The committee has the power to subpoena witnesses. It is conducting some of its hearings in secret. One NAACP official, questioned as a witness, told the committee that the hysteria caused by its activities was causing Negroes to deny NAACP membership.

A major objective of the committee is to obtain NAACP financial records and membership lists. Late in February of this year, the investigators directed the NAACP to produce its state records, which, they asserted, had been taken to New York to evade the investigation. However, since the committee had no power to enforce this order, it announced it would ask the next session of the legislature to give it broader authority. It also declared its intention to recommend bills that would "almost entirely suppress race agitation."

The Florida legislature is now in session. As this was written, the Senate had passed and sent to the House six bills designed to curb the NAACP, including a registration statute and a law to hamper anti-segregation litigation.

Georgia

The principal direct attack on the NAACP in Georgia has been a proceeding under the tax statutes. The Association has operated for many years as a non-profit corporation under Georgia law and, in fact, under the laws of every other state and the Federal Government. Nevertheless, late in November 1956, agents of the Georgia Revenue Commission raided the Southern Regional and Atlanta offices of the NAACP and demanded possession of the organization's records and membership lists, to be used to determine whether the NAACP owed any state taxes. (No similar raids or demands for tax payments were ever made on any other non-profit organization.)

At the Southern Regional office of the NAACP, Mrs. Ruby Hurley, the director, turned over all documents to the tax agents. The state later charged that 30 boxes of papers had been removed before the raid and obtained a court order allowing the Attorney General to search the office files. The search produced no new evidence.

In Atlanta, John H. Calhoun, president of the local NAACP chapter, refused to surrender its records even after tax agents obtained a court order from Judge Durwood Pye directing him to do so. On December 5, Judge Pye began hearings to determine whether Calhoun was in contempt of court. The judge rejected a defense motion that he disqualify himself because of his past "repeated denunciations of the colored race." He said that he had never attacked the colored race, but admitted that he had "strong views on the mongrelization of the races."

After five days of hearings, Calhoun was found guilty of both civil and criminal contempt. He was sentenced to a year in prison on the criminal charge, with sentence suspended "so long as he behaves himself." On the civil charge, he was imprisoned without bail until he purged the contempt by producing the records. After several hours in jail, Calhoun agreed to produce his records. A deputy sheriff accompanied him to NAACP headquarters, where investigators began an immediate seizure and listing of all documents. Calhoun was then freed.

As part of the tax action, Judge Pye fined the NAACP \$25,000 for contempt of court, naming both the Georgia and national organizations as liable for the fine. At the same time he ordered the Association to produce in his court in Georgia all the records in its New York office. The NAACP protested, first, that its national organization could not be in contempt because it had never been asked to turn over its records and, second, that it could not send its records to Georgia because it was required to keep them open to inspection in New York by members and by government officials. It initiated an appeal from Judge Pye's ruling but also offered to allow Georgia tax officials to examine its records in the New York office. Late in May 1957, two Georgia officials made a trip to New York and spent several days inspecting the files.

In July 1955, the Georgia Board of Education unanimously adopted a resolution revoking "forever" the license of any Georgia teacher who "supports, encourages, condones or agrees to teach mixed classes." When Attorney General Eugene Cook criticized this resolution as too vague, the Board, on August 1, 1955, directed that "Any teacher in Georgia who supports, encourages, condones or agrees to teach a mixed grade or any teacher who is a member of the NAACP, any allied organization, or any subversive organization, shall have his or her license revoked and forfeited for life." The Attorney General indicated that he was fully prepared to enforce this resolution, since in 1954 every state employee had been required to fill out a security questionnaire listing all organizations to which he had ever belonged.

When this resolution brought public protests from many persons, the Attorney General told the Board of Education that it was unnecessary, since state law already required that every public employee, including teachers, sign an oath swearing to "uphold, support, and defend the Constitution and laws of the State." Cook declared that this oath went "much further than any resolution" that the school board had passed. Since Georgia law requires segregation, Cook explained, a teacher belonging to the NAACP or advocating desegregation would be violating his oath. The Board of Education thereupon rescinded its resolution and ordered all teachers to sign the general oath by October 15, 1955.

In October 1955, Attorney General Cook issued a statement that the NAACP was exploiting the race issue not for the benefit of the Negro "but for their more nefarious purposes." He subse-

quently presented a report to the state legislature of his personal investigation of the NAACP, including alleged evidence of "subversive influences in and on the NAACP." On the basis of this report, he submitted a comprehensive program of legislation, including a declaration that the NAACP is an "organization subversive to the Constitution and the laws of the state of Georgia."

The legislature, which met in January 1957, did not adopt all of Attorney General Cook's proposals. It did, however, adopt a law giving the Governor broad powers to deal with emergencies. Like the Florida law, already described, this could be used to curb not only the NAACP but any other political or organizational activity which the Governor found undesirable. A proposal for a legislative investigation of the NAACP was shelved on the ground that the Georgia Education Commission, which was granted broad subpoena powers at the 1957 session, could conduct any probe that was necessary.

Finally, the legislature adopted an "anti-barratry" law imposing severe penalties on anyone "who seeks out and proposes to another person that they present and urge a suit against another person, the State of Georgia, the United States or any other legal entity." The obvious aim is to lay the NAACP and its officials open to prosecution if they make any move to suggest action by parents of Negro school children to end segregation.

Louisiana

On March 1, 1956, the Louisiana Attorney General filed a petition in a state court alleging that the NAACP had failed to register under a 1924 law requiring the officers of every "fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organization, or organizations created for similar purposes, whether incorporated or unincorporated," to file yearly membership lists with the Secretary of State of Louisiana. The penalties imposed by the law for non-compliance are imprisonment of the officers and dissolution of the organization. Although the law obviously applies to a large variety of organizations, it had never been invoked except against the Ku Klux Klan.

Fearing "reprisals, including serious bodily harm to NAACP members, especially in smaller communities, if their membership became known," the Association decided to attack the constitu-

tionality of the statute which the Attorney General had invoked, rather than turn over its membership lists. On March 28, the Association filed a petition in a Federal District Court asking the Federal court to take jurisdiction over the proceedings which the Attorney General had started. On the next day, Judge Coleman Lindsey of the state court granted a temporary injunction preventing the NAACP from doing business or holding meetings in Louisiana. (Judge Lindsey had notice of the fact that the NAACP had asked the Federal court to take jurisdiction. Hence, his action flouted a Federal law under which a state court may not act in a case after a petition for removal to a Federal court has been filed. Nevertheless, Judge J. Skelly Wright of the Federal court declined to interfere with the injunction because it was necessary for the NAACP to exhaust its remedies of appeal in the state courts before it returned to Federal court.)

Judge Lindsey made his temporary injunction permanent on April 24, 1956. The NAACP announced that, although it considered the injunction "illegal and unjust," it would comply with it while it took an appeal to the Louisiana Court of Appeals. Seven months later, that court held that the injunction should not have been issued and consequently was null and void.

The way now seemed clear for a contest of the state registration law in the Federal court and for resumption of NAACP's public activities. However, Jack Gremilion, State Attorney General, took a different view. In a public letter to the NAACP, he said that he was "confused, just like everybody else," by the ruling of the Louisiana Court of Appeals, but that he was still prepared to enforce the penal provisions of the law against the NAACP if it did not register. He warned the Association that its "failure to comply with the law leaves us no alternative except to vigorously pursue the matter." On December 12, 1956, a cordon of patrol cars assembled outside an NAACP meeting in New Orleans, in an obvious attempt at intimidation. Shortly afterward, Gremilion advised the New Orleans District Attorney that, until the NAACP registered, it could be prosecuted for holding meetings.

Faced with the Attorney General's refusal to honor either the Federal law or the decision of the Louisiana Court of Appeals, the NAACP finally submitted. On the last day of 1956, the New Orleans branch yielded the names of its 300 members and other chapters thereafter followed suit. "We're assuming," said one NAACP official, "that the only reason the Attorney General wanted to put us out of business was because we hadn't filed our

membership lists. He gave us an opportunity to file and we took him up on it." The NAACP is now free again to operate in Louisiana.

While this suit was in the courts, the Louisiana legislature also took action. In June 1956, apparently on the assumption that Judge Lindsey's injunction would remain in force indefinitely, the state legislature passed a series of four laws barring from public school employment all members of organizations enjoined from operating in Louisiana. These laws also prohibit school employees from "advocating or performing any act toward bringing about the integration of the races within the public school system." The statutes apply not only to teachers but also to bus operators, custodians, janitors and other employees of public schools and public colleges. Presumably, any Louisiana school employee who joins the NAACP risks a ruling that he has performed an act toward bringing about integration. (These statutes were declared unconstitutional in part on April 15, 1957, in a proceeding brought by NAACP challenging a number of statutes designed to halt the process of integration in the state university. The state will probably appeal this decision.)

Finally, this year, a special committee of the Louisiana legislature has been holding hearings obviously designed to discredit the NAACP. Witnesses have described the Association as a tool of the Communists, despite its well known record of opposition to Communism and all other forms of totalitarianism. So far, the Committee has refrained from subpoenaing NAACP officials or demanding production of its records.

Mississippi

In March 1956, the Mississippi legislature established a 12-member State Sovereignty Commission with Governor James P. Coleman as its head. Governor Coleman explained that this was done to "enable us during the next two years to maintain a successful fight for preserving separation of the races in this state." The Commission was given a \$250,000 budget and power to issue subpoenas and to employ secret investigators and confidential informants. Thus, the Commission has ample powers to harass the NAACP with the same tactics that have been used in other states.

The 1956 legislature also took other steps to frustrate attacks by organizations on its segregated school system. In February

1956 it adopted a law purportedly designed to ban promotion of lawsuits by persons or groups having no legitimate interest in them. The law states that no person or organization may promise, give, offer, receive, accept, solicit or donate money for the purpose of inducing a person to bring a proceeding in a court or before an administrative body. This has the same aim as the Georgia statute already described.

Mississippi has also acted to prevent out-of-state lawyers from representing Mississippi clients. Under a law adopted in April 1956, an out-of-state attorney who wishes to plead in the Mississippi courts must, if his qualifications are challenged, convince the State Board of Bar Admissions that he is of good professional standing and character. The State Board may ask the attorney to what organizations he has belonged or contributed money in the past five years. In practice, the Board could and probably would bar any attorney admitting membership in the NAACP. Thus, not only in desegregation cases but in proceedings brought against the NAACP itself, the Association's legal staff would be kept from appearing.

Another of the package of anti-integration legislation enacted in February 1956 was a law requiring all school employees to reveal organizational affiliations for the past five years. Failure to file means automatic loss of job. The threat to those teachers who are members of NAACP was not spelled out. Nevertheless, the Mississippi Negro Teachers Association characterized the statute as "an instrument of fear to every law-abiding Negro teacher in the state."

The 1956 legislature also raised to \$500.00 the fine for persons convicted of "loud, and offensive talk" and other breaches of the peace. This large fine could be used to deal with NAACP leaders arrested for disturbing the peace by speaking against segregation. Like other statutes aimed at the NAACP, however, it also threatens union organizers and leaders of other locally unpopular causes.

North Carolina

In December 1955, an organization called the Patriots of North Carolina called upon North Carolina authorities to force the NAACP to register under two state laws previously thought to apply only to businessmen and lobbyists. One law requires out-of-state corporations doing business in North Carolina to file

annual reports and to pay registration fees based on the value of their capital stock. Violators are subject to a \$500 fine. The other statute, the Gray Act, requires the registration of all organizations engaged in "influencing public opinion and/or legislation." Each registering organization must supply the following information: the name and address of its principal place of business and of all of its branches; the purposes of the organization; the names and addresses of its officers, agents, servants and employees; and a complete financial statement, including its sources of income. Failure to comply constitutes a misdemeanor.

After an exchange of correspondence with NAACP's national headquarters in New York, Attorney General William B. Rodman officially informed the organization that it had subjected itself to the laws of North Carolina and would be required to register. Instead of registering, the NAACP petitioned the Superior Court of Wake County to rule that the two statutes did not apply to it, since it did no business in the state and was not engaged in influencing public opinion or legislation. The Association also urged that, if the statutes did apply to it, they unconstitutionally interfered with freedom of speech and the right of petition.

During the procedural maneuvers that followed, the Attorney General expressed the opinion that the NAACP refused to register only because it was "raising stupendous amounts of money" in North Carolina and did not want to reveal either the amount or the purpose for which the money was being used.

Ultimately, the State Supreme Court required the NAACP to abandon its attack on the Gray Act and to confine its suit to the act dealing with foreign corporations. The Association then decided to comply with that Act and paid the \$500.00 fine which had been levied under it. It still takes the position that it cannot be constitutionally required to register under the Gray Act. No steps have been taken by the state as yet to require such registration.

South Carolina

In March 1956, the South Carolina legislature adopted a statute which declared that membership in the NAACP is "wholly incompatible with the peace, tranquility and progress that all citizens have the right to enjoy," and accordingly prohibited all schools and government agencies from employing NAACP members. The statute authorized the board of trustees of any public

school or any state-supported college to obtain from employees sworn affidavits that they were not NAACP members. Any school official who hired an NAACP member was himself subject to punishment. The point of view that produced the statute was summarized by Representative Charles A. Garrett who remarked:

The bill . . . is designed to protect our Negro citizens and colored public employees, most of whom are not members of the Organization, from the intimidation and coercion of the NAACP, as well as to limit its activities against the best interests of our white citizens. . . . There is no more place in our state for the NAACP as presently constituted and with its present policies and aims than there is for the Ku Klux Klan.

This statute was challenged in Orangeburg County, home of the State Teachers College for Negroes. The superintendent of the Elloree School District in that county distributed a questionnaire to the teachers containing the following questions:

"Do you belong to the NAACP?"

"Does any member of your immediate family belong to the NAACP?"

"Do you support the NAACP in any way (money or attendance at meetings)?"

"Do you favor integration of races in schools?"

Of 31 teachers in the school, 24 either refused to fill out the questionnaire or resigned in protest against it. The contracts of these 24 were not renewed for the 1956-57 academic year. Subsequently, 17 teachers brought a Federal court action to prevent school authorities from inquiring into their beliefs. The first hearing was held on October 22, 1956. The NAACP, which represented the 17 teachers, argued that the new state law violated the constitutional guarantees of freedom of speech, association and petition and also that it specifically discriminated against the NAACP. The school board contended that the Federal court did not have jurisdiction, since the teachers had not first sought relief through South Carolina administrative agencies and state courts. Appearing as a friend of the court, the Attorney General of South Carolina stated:

The NAACP has reached a point of no return as far as South Carolina is concerned. They are disturbing the domestic tranquility and causing enmity and bad feelings between people who have always lived together. We do not wish to have its members teaching in our schools.

The three judges on the Federal court that heard the case divided three ways in their decision. The result was a ruling that the court had jurisdiction over the matter but would withhold its decision until the teachers had taken their case to the state courts.

On April 22, 1957, the teachers filed an appeal with the United States Supreme Court asking review of this ruling. The next day, the South Carolina legislature rushed through a bill in a manifest effort to frustrate the appeal. The new law, signed by Governor George Bell Timmerman, Jr., on April 24, 1957, repealed the 1956 law barring NAACP members from public employment and provided instead that all applicants for state employment shall give full information "as to active or honorary membership in or affiliation with all membership associations and organizations." No exceptions were made for any type of organization. The effect of this new law on the pending suit remains to be determined.

Even if it proves to be true that the NAACP's attack upon the 1956 law achieved a victory by compelling repeal of that patently discriminatory statute, the new law remains an obstacle to freedom of association. In view of the proclaimed hostility of state officials to the NAACP, few South Carolina teachers will feel free to join or support that organization, no matter how strongly they may sympathize with its objectives.

Earlier, in February, the 1957 session of the South Carolina legislature enacted and Governor Timmerman signed an "anti-barratry" law admittedly aimed at the NAACP or any other organization that fosters anti-segregation suits. In detailed fashion, it prohibits anyone who has no direct or substantial interest from bringing an action or soliciting or inciting others to do so. Such persons are also prohibited from paying or receiving anything of value in connection with the action. Violators are subject to two years in jail or a \$2,000 fine.

Still pending in the legislature is a bill to authorize the State Attorney General to investigate the records of foreign and domestic non-profit corporations.

Use of the tactic of investigation has also been threatened in South Carolina. In July 1955, when Orangeburg Negroes organized to petition for integration of the local schools, a Citizens Council started a boycott of Negro merchants. In retaliation, the Negro community began to boycott white stores. Amid increasing

bitterness, the 1,200 students at the State Teachers College for Negroes decided to join the counter-boycott. Next, the state legislature voted an "investigation of the activities of the NAACP among the faculty and students at the South Carolina State College." This action inflamed student resentment at the College. Governor Timmerman then ordered state police to place the campus under surveillance because of "expected trouble from subversive elements." In April 1956, the college's 1,200 students boycotted classes for four days and held demonstrations against the investigation and the governor's action.

At that point, however, the State College authorities yielded. They brought the strike to an end by expulsions and threats of expulsions. Fred Moore, a student leader, was dismissed from the College for his participation in what the Board of Trustees termed "the insurrection." In June, 15 other students were notified that they would not be allowed to register for the September term. Five faculty members were dropped. A number of others resigned.

When the legislative investigating committee notified the College that it was ready to begin its probe, it was assured by the College president that there was nothing left to investigate. The committee visited the campus, conducted a one-day hearing and went home.

Those who organize opposition to segregation in the Southern states face an additional danger. The hostility of state judges and juries makes them especially vulnerable to trumped up suits by private individuals. A libel suit in South Carolina illustrates this problem.

An attorney in Sumter, S.C., who was defending two school boards against a suit to end segregation, released a statement quoting one of the original Negro petitioners as saying that he had never really asked that the schools be integrated and implying that his signature had been misused. The Sumter NAACP Branch replied in a statement claiming that the petitioner had in fact requested integration. It added that either the petitioner was "double-talking or the officials who are releasing these statements to the press are wording these retractions to fit the Citizens Committees." The attorney then filed a suit against the Sumter NAACP branch and its officers for \$100,000 since, he said, he was the "official" responsible for releasing the statement and therefore had been libeled. Solely because the case would have been tried

before a jury of white Southerners, the defendants were forced to settle this action for \$10,000.

Tennessee

Following the United States Supreme Court's desegregation decision of May 1954, a number of school districts in Tennessee were desegregated. Hence, there was reason to believe that the record of this state would not be disfigured by extremist action. Unfortunately, the Tennessee legislature has now belied that hope.

In February and March 1957, three laws were adopted modeled almost exactly on three of the laws passed in Virginia in 1956 as part of that state's elaborate scheme to hamstring the NAACP. Since the Virginia laws that Tennessee copied are described below, it is sufficient to say here that they (1) require registration of individuals or groups collecting or spending funds for the purpose of initiating legal proceedings to which they are not a party and not financially interested; (2) require registration of all individuals or groups who promote or oppose legislation "in behalf of any race or color" and (3) make it a crime for an individual or organization to promote litigation.

These statutes raise the same constitutional and practical problems as the Virginia statutes now being challenged by the NAACP in the courts.

Texas

The attack on the NAACP in Texas roughly parallels the attack made in Alabama. But where Alabama relied primarily on a single registration law, Texas has brought a whole battery of state laws into play. Among the charges made when the state moved against the Association in September 1956 were that it had engaged in political and lobbying activities, that it had practiced law illegally, that it had unlawfully solicited and recruited plaintiffs for lawsuits against segregation, that its activities would result in "racial hatred and inflamed communities," that it had not paid franchise taxes, that it had failed to secure a state permit to operate, that it was not a non-profit organization, as it claimed, and, finally, that its national headquarters in New York had refused to permit Texas to inspect its records.

On the basis of these charges, Texas Attorney General Ben Shepperd sought a permanent injunction forever barring all NAACP activities in the state. His first move was a request for a temporary restraining order to halt NAACP activities. His petition was presented to the Texas District Court in the City of Tyler in September 1956. On September 21, without notice to the NAACP and without a hearing, the presiding judge granted the order. His explanation for acting without a hearing was that any delay would have meant "immediate and irreparable injury" to the state. The stage was thus set for a trial on the issues to determine whether the temporary restraining order—which under law is a transitory measure—should be converted to a temporary injunction, which can remain in force indefinitely.

Just before the trial began, members of Attorney General Shepperd's staff, accompanied by Texas Rangers, descended upon the NAACP offices in Dallas, Houston and Corpus Christi and demanded to see the organization's records. Although the NAACP made no objections, this was obviously no mere routine request for information. The use of Rangers and the suddenness of the call revealed an intention to intimidate and to generate public hostility toward the Association.

The trial began in October and lasted seventeen days. Much of the evidence consisted of statements obtained by Shepperd's assistants on investigative forays throughout the state. The main thrust of Shepperd's argument was that the NAACP, by means of a "preconceived plan," had "solicited and recruited and coerced Negro students and parents of students to take steps that otherwise they would not have taken," resulting in "racial hatred and inflamed communities." Shepperd also claimed that the NAACP, though supposedly a non-profit organization, had actually made a "profit" of \$100,000 in 1955 and thus owed \$900 in franchise taxes.

On October 24, Judge Otis T. Dunagan upheld the state's charges. The restraining order was converted into a temporary injunction, forbidding indefinitely all NAACP operations in Texas. The NAACP could bring no lawsuits to oppose segregation practices; hold no meetings; collect no dues. It could not even register with the Secretary of State as an organization functioning in the State of Texas.

This order remained in effect for nine months. Then, on May 15, 1957, after a brief trial, Judge Dunagan issued a final

order substantially modifying his original decree. It provided that the NAACP was free to operate in Texas provided it complied with certain conditions. These included paying a franchise tax, keeping its records open to inspection by the Attorney General, refraining from lawsuits for its own profit or for the purpose of vexing the defendants and refraining from "instituting or soliciting . . . or financing" any court action. The final order also prohibited the NAACP from engaging in political and lobbying activities. The NAACP has decided to appeal from this ruling.

Meanwhile, the Texas legislature has commenced its 1957 session. Among the bills already passed by the lower chamber is one that would prohibit any agency of the state, including public schools, from employing NAACP members. Another would require all organizations advocating or opposing racial integration to register with the Secretary of State.

Virginia

The most elaborate, systematic and sophisticated attempt to frustrate NAACP activity has been made in Virginia. In September 1956, the Virginia legislature adopted seven laws frankly designed to bring an end to all activities of the Association in that state. These laws, which constitute Chapters 31 to 37 of the Acts of the Special Session of the 1956 General Assembly of Virginia, provide as follows:

Chapter 31 requires any person who seeks to collect or spend funds for the purpose of initiating a legal proceeding to which he is not a party and in which he has no financial interest to submit certain information to the State Corporation Commission. In the case of an organization, this information includes copies of its charter and by-laws, the names and addresses of its officers, employees and members, identification of the sources of all monies contributed to it and a listing of the expenses and locations of all its offices and branches. Since the NAACP is never the actual party in an integration suit and cannot have any financial interest in its outcome, it would be compelled to register in order to continue its court activities on behalf of integration. In registering, it would reveal the names of its members.

Chapter 32 requires submission of the same kind of information by persons or groups promoting or opposing state legislation

involving segregation and desegregation. It also applies to groups raising or spending money for litigation "in behalf of any race or color." Groups which do nothing more than "advocate" desegregation must also register. Together, Chapters 31 and 32 make it necessary for the NAACP to submit all the required information or cease all meaningful activities.

Chapters 33 and 35 contain various provisions against "barratry," "running" and "capping." In elaborate detail, the two statutes bar such activities as paying an individual to act as a plaintiff or merely seeking out plaintiffs and convincing them to bring suits. Chapter 36 forbids individuals or groups from promoting or even involving themselves in any suit against the State of Virginia or any of its agencies or officers in which they do not have a direct interest. Under this law, the NAACP could not help defray the fees of a private lawyer hired by an individual to prosecute an integration suit; nor could it offer professional advice to the lawyer on how to conduct the case. (In assessing the effect of these five laws, the hostility of Southern tribunals must be kept in mind. Even if the NAACP were fully and legally registered, did not enter a case until invitation from the plaintiff himself and offered no compensation to the plaintiff for work lost, etc., it is not unlikely that Southern juries would find some evidence of "running," "capping," "champerty" or other prohibited acts.)

Finally, to take care of any loopholes remaining, Chapters 34 and 37 of the 1956 Acts created legislative investigating committees to probe, respectively, (1) the sufficiency of state laws against barratry, running, capping and other such legal abuses; and (2) groups seeking to influence or promote litigation involving racial activities.

Shortly after the Virginia legislature enacted these laws, the NAACP's legal branch brought suit in a Federal court to have them declared unconstitutional. With this suit pending (a hearing is scheduled to start on June 26, 1957), the Association could justify refusing to comply with the registration requirements until its case was decided.

Meanwhile, however, the other two statutes were invoked. The two committees established by these laws called upon the NAACP to surrender not only its complete membership lists but also records of every contribution received and disbursement made

during 1956 and copies of all its correspondence involving integration suits. This, of course, was the very kind of information required by the laws being considered in the pending lawsuit.

On February 13, 1957, the NAACP refused the Committees' requests. Instead, it offered to supply the names and addresses of officers and branches and a certified statement of total receipts and disbursements. The names and addresses of members and contributors would be withheld, the NAACP said, until the Federal courts had determined the constitutionality of the Virginia statutes.

Thereafter, the committees obtained state court orders requiring the NAACP to comply with their requests. A Federal court judge, who was requested by the NAACP to prevent enforcement of the state court orders, decided not to intervene pending final outcome of the state court proceedings. An appeal in those proceedings is now pending and will be heard in the Fall.

Meanwhile, on March 12, the Committee on Law Reform and Racial Activities quizzed five NAACP officials in a closed session. The NAACP announced that it had supplied the Committee with some of the information it wanted but had refused to disclose the names of its members, contributors or local officials.

IMPLICATIONS OF THE ATTACK

THE STORY WE HAVE TOLD HAS NOT YET ENDED. FURTHER moves against the NAACP and other organized anti-segregation forces are already threatened. Yet the main lines of attack have probably been laid down. Let us review them briefly.

The Methods

1. Discriminatory use of existing laws to halt an organization's activity.
2. Bans on state employees' membership in specified organizations.
3. Laws requiring publication of the names of members of an organization, so that they will be exposed to economic and other oppression.
4. Laws requiring organizations to submit to registration requirements difficult if not impossible to fulfill.
5. Laws imposing on associations prohibitive or excessive license fees or taxes.
6. Laws prohibiting or burdening organized support of litigation to enforce particular rights.
7. Legislative investigations to harass an organization's leaders, sequester its records, expose its members or present its activities in an unfavorable light.
8. Laws creating "emergency" powers to halt organizational activity deemed harmful to the interests of the dominant group in the state.

The purpose of these measures — the avowed purpose in many instances — is to destroy the NAACP or frustrate its activities. The very right of an organization to exist — of citizens to associate for common purposes — is at stake. For it must never be forgotten that there is nothing inherent in the nature of the

measures that limits their use to the NAACP. Each may be used against any organization.

This may be seen by considering each of the measures separately:

1. *Use of Existing Laws.* A state can at any time start legal proceedings like those launched in Alabama, Georgia, Louisiana and Texas to curb the NAACP because of an alleged failure to comply with existing laws. The tax laws alone provide a basis for such harassment. It can always be claimed, as it was in Texas and Georgia, that an association is in fact making a profit and hence is not entitled to tax exemption as a non-profit organization. This can be the excuse for seizing its records and demanding lists of members and contributors. It is even possible that, as in Alabama and Texas, the court decree ordering the organization to halt all its activities will be issued first and the trial held later.

The \$100,000 fine imposed on the NAACP in Alabama is a particularly obvious use of the law to oppress rather than correct. It is a reminder that excessive fines can be used to destroy rather than to punish or compensate. (See the dissent of Justice Brandeis in *U.S. ex rel Milwaukee Publishing Co. v. Burleson*, 255 U.S. 407. See also *Weems v. United States*, 217 U.S. 349.)

2. *Bans on Membership.* The device of barring membership by government employees in a specific organization has already been used in at least two states and is threatened in others. South Carolina provided simply that no state employee may be a member of the NAACP and then modified that statute when it was challenged in the courts. Georgia first directed revocation of the license of any teacher who was an NAACP member and then achieved the same end by ruling that membership in the NAACP is inconsistent with the oath to defend the state constitution and laws that is required of all state employees. In addition, Louisiana has prohibited school employees from doing any act that promotes integration, a prohibition that undoubtedly encompasses joining or supporting the NAACP. Mississippi has required school employees to reveal their organizational affiliations, leaving implicit the threat of action against NAACP members.

There are practically no limits on the use of this kind of prohibition. Once we accept the principle that the state has the power to tell its employees what organizations they may or may not join, it may proscribe organizations, by name or by descrip-

tion, without any limits. It may bar religious groups, tax reform associations or labor unions.

The organization proscribed by such a regulation suffers more than the loss of those members who may then be government employees. Any citizen contemplating government employment must refrain from joining. Moreover, the mere fact of formal condemnation by a state government has a broadly proscriptive effect that is likely to be resisted only by born rebels or persons goaded beyond endurance.

3. *Publication of Membership Lists.* Exposure of membership rolls is the simplest device of all. It has been used in a number of ways. The lists may be sought in court proceedings, as in Alabama, Georgia and Louisiana. They may be required by legislation effectively aimed at the proscribed group. The law may be frankly discriminatory, as in the Arkansas legislation requiring organizations that promote integration in schools to name all their contributors (necessarily including dues-paying members). Or it may be like the Tennessee and Virginia statutes which, with a fine show of even-handed justice, require membership lists of organizations that are either for or against segregation. Finally, membership lists may be demanded by legislative investigating committees, as in Florida and Virginia.

This procedure automatically discriminates against unpopular causes. The American labor movement, for example, is only too familiar with the need for keeping a union's membership rolls secret until it has won acceptance in the community. Organizations representing unpopular religious or political views need similar protection. Indeed, the American tradition of secrecy for organizations protesting against oppressive state action goes back to the Sons of Liberty and Committees of Correspondence that led resistance to the tyranny of George III. If a state may declare an organization's membership lists to be public property, it can by this one act drive any unpopular organization out of existence or into illegal resistance.

An organization particularly needs to preserve the secrecy of its membership lists when well-organized groups have publicly announced their intention of persecuting its members and have frequently put their intentions into effect. As we show below, that is the situation today in large parts of the South.

4. *Requiring Registration.* Registration statutes, besides exposing membership lists, may harass an organization by other

requirements that it cannot practically fulfill. Thus, the Arkansas law requires pro-integration groups to get receipted bills of all expenditures, no matter how small, showing the name and address of the person who received the money. Similar burdensome requirements are imposed in the laws recently enacted in Tennessee and Virginia. It would be a simple matter for a state to impose the same requirements on any organization seeking to change the laws of the state on any subject. For example, an organization urging public support for religious institutions could be forced to expend all its energies on keeping records.

The United States Supreme Court has recognized that oppressive state regulation of private associations may be the equivalent of state destruction. Having held, in 1925, that a state may not prohibit the operation of private schools, it ruled two years later, in *Farrington v. Tokushige*, 273 U.S. 284, that such a prohibition could not be achieved indirectly by subjecting private schools to excessive and oppressive governmental regulation and supervision.

5. *Special Taxation.* If the power to tax is not the power to destroy, it is only because under our Constitution it may not lawfully be used for that purpose. The stamp taxes imposed by the English government in the 18th century, denounced by the fathers of the American Revolution as "taxes on knowledge," were levied not to raise revenue but to suppress or harass unpopular and objectionable publications. A 20th century state statute, similarly motivated, has been declared unconstitutional by the Supreme Court (*Grosjean v. American Press Co.*, 297 U.S. 233. See also *Follett v. McCormick*, 321 U.S. 573; *Murdock v. Pennsylvania*, 319 U.S. 105; *Jones v. Opelika*, 319 U.S. 103.)

This technique has been used against the NAACP so far only in one state, in a law applicable to a single county — the Alabama statute requiring all organizations soliciting money in Wilcox County to pay a fee of \$200, plus \$50 for each solicitor and \$5 for each member enrolled. The purpose of this law is not to raise revenue but to suppress or harass the NAACP. As we have seen, the sponsor of the measure remarked with innocent candor that "without such a proposal it would be very easy for the NAACP to slip into . . . [the state] and teach the Negroes undesirable ideas." Nevertheless, the law applies to all organizations soliciting money in the county.

6. *Anti-Barratry Laws.* The anti-barratry statutes are a peculiarly reckless attack on an accepted feature of our society. The

laws adopted in Georgia, Mississippi, South Carolina, Tennessee and Virginia barring support of lawsuits by persons or organization not having a direct interest in them were aimed specifically at suits sponsored or supported by the NAACP. They were motivated by the fact that the NAACP was the chief protagonist in the struggle to translate into reality the principles enunciated in the Supreme Court's anti-segregation decisions. But these statutes jeopardize effective enforcement of all constitutional guarantees, not merely the guarantee of equal treatment. Indeed, they make it difficult to challenge any law that the legislature sees fit to enact.

This was aptly pointed out in a letter to the *Washington Post and Times Herald* of February 25, 1957, that is worth quoting in full:

When Virginia announced that it would tax the Civil Service widows' annuity, it was fine to read of the many generous offers to share in the legal expenses involved in fighting the ruling. I wonder how many of these people realized that under the legislation recently passed by the Virginia Legislature, any person or organization taking up a collection for such a person would first have to register with the state and be prepared to file a great deal of detailed information?

I wonder how many more realized that even if money were collected thus legally, any Virginia lawyer who took the case and accepted part of his fees from persons not connected by blood or by direct pecuniary interest in the particular case at issue would be guilty of barratry and subject to disbarment? This legislation, of course, was aimed at the NAACP. It is interesting that so soon after it was passed a situation should have arisen which points out so clearly the foolish restrictions which it imposes on the liberties of all of us.

7. *Legislative Investigations.* If we accept the notion that legislative committees have unlimited power to select the objects of their inquiries, to seize records, publish membership lists, subpoena organization officials and question them at length as to their activities, dealings with members, purposes and finances, then any organization, and not merely the NAACP, can be "investigated" out of existence by a legislative committee. The Florida investigation of the NAACP is being conducted under a broad statute authorizing investigation of "all organizations whose . . . activities include a course of conduct . . . inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state." The Virginia investigation is being conducted under a statute directing a

probe of groups influencing legislation involving "racial" activities; the statute could just as easily specify "religious," "union," "educational," "economic" or "political" activities. In Louisiana, the committee hearings aimed at the NAACP have been held under the legislature's general powers. The investigations recently authorized in Arkansas and Mississippi can be expected to range as widely as those already started in Florida, Louisiana and Virginia.

8. *Emergency Powers.* Finally, under the "emergency" legislation adopted in Florida and Georgia, there is no limit on the states' powers. The governor may declare an "emergency" entirely at his own discretion. He may then halt organizational activity completely, as a threat to the "peace and good order of society." Obvious targets for such a maneuver are a union organizing drive or a leaflet distributing campaign by the Jehovah's Witnesses.

Nothing in any of these procedures limits their operation to the NAACP or other anti-segregation forces. The target is unpopular, not illegal, activity. True, several of the states, Alabama, Georgia, Florida, Louisiana and Texas, have based their laws and proscriptions in part on the claim that the NAACP has attempted to undermine state segregation laws. Those laws, however, have been invalidated by the United States Supreme Court. The notion that the Association's activities are illegal thus rests on a legislative pronouncement issued in defiance of the Supreme Court. Any other activity could also be illegally declared "illegal."

The Immediate Target: NAACP

The purpose of the measures described above is to halt organized activity against racial segregation. In practice this has meant halting the NAACP. It has been the NAACP that has organized the decisive, concrete steps against discrimination in voting, against lawless mob violence and now against racial segregation in universities, schools, railroads, busses and government facilities.

The attack on the NAACP has been launched because its efforts have been effective. Indeed, the Southern government officials responsible for many of these repressive measures have frankly admitted their desire to prevent opponents of segregation from associating in the NAACP.

The Attorney General of South Carolina defended the expressly anti-NAACP legislation of that state by saying "The NAACP

has reached a point of no return as far as South Carolina is concerned." A Louisiana state senator who has led the demand for pro-segregation legislation in that state has stated publicly:

We should be ashamed of ourselves if we cannot win our fight. We are by no means broke, we can vote, we still have our own officials and we can pack the NAACP off to where it belongs.

A Mississippi judge told a White Citizens Council meeting that the South needs "a slingshot to hit between the eyes of that giant monster NAACP."

As we have seen, the attack includes not only measures directly banning NAACP activity but also the calculated device of exposing the Association's membership to reprisals. The reprisals are threatened in part by the states themselves, in part by groups like the White Citizens Councils. The steps taken to compel exposure of membership lists are made with full knowledge of the widespread threats of economic sanctions that have been made against members of the NAACP.

When the White Citizens Council movement was launched, its leaders proclaimed their intentions in warnings plainly addressed to NAACP leaders and members. One of the Mississippi founders said:

It is the thought of our group that the solution of this problem may become easier if *various agitators and the like* could be removed from the communities in which they now operate. We propose to accomplish this through the careful application of economic pressure upon these men who cannot be controlled otherwise . . . the medium of economic pressure can be used quite effectively to the end that those *who stir up discontent may be removed from the community*. (Emphasis added.)

Later, an Alabama White Citizens Council leader said:

The white population in this country controls the money, and this is an advantage that the council will use in a fight to legally maintain complete segregation of the races. We intend to make it difficult, if not impossible, for *any Negro who advocates desegregation* to find and hold a job, get credit or renew a mortgage. *We'll force the trouble-makers out*. (Emphasis added.)

State action compelling disclosure of the names of those who "advocate desegregation" by supporting the NAACP or "stir up

discontent" by organizing NAACP chapters is obviously designed to facilitate application of the boycott thus proclaimed.

But exposed NAACP members have more to fear than economic pressure, boycotts and loss of employment. Murders, brutal assaults and other violence have occurred often enough to create continuing threats to the physical security of any Negro who acknowledges membership in the NAACP. The press continues to report not only threats but actual instances of personal assault and bombings. Homes have been and still are being destroyed and churches desecrated.

Against this background, moves by the state governments to compel disclosure of NAACP membership lists are obviously not made in the cause of disinterested law enforcement. Their purpose is to prevent the opponents of segregation from associating, in the NAACP or otherwise, for effective action.

The Goal: Destruction of Organized Opposition

The strength of the anti-segregation forces lies in association. Up to now, that has meant primarily association in the NAACP. But most of the measures described above could be used equally well against any organization having similar aims. Indeed, as we have seen, the same or similar measures could be used against any individuals who formed an association in support of an unpopular cause.

The right individually to protest, individually to sue, individually to seek legislation, is of little value in our complex society. Particularly in an atmosphere of extreme hostility, such as that faced by the Southern Negro, organization is indispensable for effective action. In such an atmosphere it is understandable and indeed inevitable that the individual should fear to act alone; he needs the reassurance that others have joined their fates to his.

This is especially true of the court actions that are so vital a part of the continuing struggle for equality. Although the Supreme Court has held segregation illegal, it is notorious that many states of the Deep South have proclaimed their refusal to abide by that decision. In five states, not a single public school, college or university facility has yet been desegregated. A welter of patently unconstitutional legislation has been passed to block compliance with the Supreme Court decision even by willing

school authorities. It will take a long course of litigation to break this barrier. Individual Southern Negroes obviously cannot bear that burden and hence have selected the NAACP for that purpose.

Again, association is essential to any effort by Negro and white citizens in Southern states to obtain repeal of racist laws. It is essential to those who would support forward-looking legislation in state capitols and city councils. It is the normal procedure for obtaining desired legislative action in our democratic society today.

Finally, association is necessary to political action, particularly where the very right to engage in that action is restricted or denied. Americans generally know that they must organize to use effectively their right to vote. The existence of political parties almost since the birth of our republic attests to that fact. But Southern Negroes must organize not only to use their vote; they must organize to obtain it. Individually, they cannot hope to break through the barriers placed by hostile officials on their right to use the ballot. By collective action through the NAACP, they have at least started to level those barriers; for example, by obtaining Supreme Court decisions condemning the white primary and discriminatory registration laws.

ASSOCIATION IS PART OF AMERICAN DEMOCRACY

IN SHOWING THAT ASSOCIATION IS NECESSARY IN THE NEGRO'S fight for equality, we illustrate a much broader point—that association is a basic and necessary part of the American democratic process. This fact has been repeatedly stressed by observers of the American scene. The French visitor, Alexis de Tocqueville, noted this as long ago as 1840:

Americans of all ages, all conditions, and all dispositions, constantly form associations. . . . If it be proposed to advance some truth, or to foster some feeling by the encouragement of a great example, they form a society. Wherever, at the head of some new undertaking, you see the Government in France, or a man of rank in England, in the United States you will be sure to find an association. . . .

Thus the most democratic country on the face of the earth is that in which men have in our time carried to the highest perfection the art of pursuing in common the object of their common desires, and have applied this new science to the greatest number of purposes. . . .

Among democratic nations, on the contrary, all the citizens are independent and feeble; they can do hardly anything by themselves, and none of them can oblige his fellow men to lend him their assistance. They all, therefore, fall into a state of incapacity, if they do not learn voluntarily to help each other. *If men living in democratic countries had no right and no inclination to associate for political purposes, their independence would be in great jeopardy; . . .* (De Tocqueville, *Democracy in America*, Galaxy Edition, Oxford University Press, pp. 319-320.) (Emphasis added.)

Lord Bryce, in 1888, said:

Associations are created, extended, and worked in the United States more quickly and effectively than in any other country. . . .

Such associations have great importance in the development of opinion, for they rouse attention, excite discussion, formulate principles, submit plans, embolden and stimulate their members, produce that impression of a spreading movement which goes so far towards success with a sympathetic and sensitive people. . . . If it be true that individuality is too weak in the country, strong and self-reliant statesmen or publicists too few, so much the greater is the value of this habit of forming

associations, for it creates new centres of force and motion, and nourishes young causes and unpopular doctrines into self-confident aggressiveness. (Bryce, James, *The American Commonwealth, Third Edition*, 1899, Vol. II, pp. 278-279.)

President Lowell of Harvard University said in 1914:

Freedom of expressing dissent includes liberty of organization, and in order that this may be completely effective it must not be confined to purely political objects, but must become a part of the popular customs, covering all matters in which people are interested. (Lowell, A. Lawrence, *Public Opinion and Popular Government*, American Citizen Series, p. 39.)

This theme was reiterated most recently by the late Professor Chafee:

If we look over our national history, we see that many of the most significant political and social changes began with the efforts of some small informal group disliked by the ordinary run of citizens. The abolition of slavery grew out of Garrison's Anti-slavery Society and similar associations. The Nineteenth Amendment is the culmination of the activities of a few unpopular women in the middle of the last century. The popular election of Senators, the federal income tax, and several other reforms largely originated with the Grangers and the Populists. . . . Under modern conditions, freedom of speech under the First Amendment is likely to be ineffective if it means only the liberty of an isolated individual to talk about his ideas. Indeed, from the very beginning, freedom of speech has involved the liberty of a number of individuals to associate themselves for the advocacy of a common purpose whether they exchange ideas in a hall or by mail like the Committees of Correspondence before the Revolution. Thus, freedom of speech and freedom of assembly fit into each other. They are both related to the possibility of petitioning Congress and the state legislatures for redress of grievances, which is only part of the wider freedom to submit the views of the individual or the group to the people at large for judgment. (Chafee, Jr., Zechariah, *The Blessings of Liberty*, pp. 150-151.)

Professor Rose, in a detailed study of "voluntary associations," has noted that at least 5,000 national associations exist in the United States. Local associations are numberless; a count of voluntary associations in the Twin Cities, excluding church and occupational groups, revealed a total of 3,000, of which about 450 were engaged in an effort to influence or educate the population. (Rose, Arnold M., *Theory and Method in the Social Sciences*, pp. 52n, 55-56.)

Considering particularly the problems of a mass society, such as ours has become, Professor Rose concludes:

Political power, or influence, in the United States is not concentrated in the government but is distributed over as many citizens, working through their associations, as want to take the responsibility for power. . . .

The voluntary associations offer a powerful mechanism of social change; they are an important factor in making the United States what European observers call "dynamic." As soon as a felt need for some social change arises, one or more voluntary associations immediately spring up to try to secure the change. Not only do they operate directly on the problem, but their attention to it also makes the government concerned about the problem, as a democratic government has to pay attention to the interests of alert voters. (*Id.*, pp. 68-69, 70.)

That freedom of association is a characteristic of all democracies, and not of the United States alone, has been noted by Professor Truman:

The political devices available under the American and British Constitutions are not identical, but in both countries the organized political group is a major element in the political process. Other examples could be given to demonstrate further that the political interest group is not a peculiarly American institution. One might note that in France organized groups of business men, workers and farmers, to say nothing of the Catholic Church, have been a central element in the governing process both before and since World War II. One might elaborate on the development of such groups in Sweden, where they have become not only a vehicle for political demands but also, to a remarkable degree, administrative agencies of the state. Their activities are visible in every community where freedom of association is an element in the constitutional fabric. (Truman, David B., *The Governmental Process*, p. 10.)

Conversely, suppression of association is a necessary feature of totalitarianism. Thus, the destruction of organized opposition and of associations not dominated by the central ruling group has been a consistent feature of the Communist regime in Russia. Starting with the banning of all "non-socialist" parties shortly after the Bolshevik Revolution, the Communist Government proceeded, step by step, to destroy all independent organizations and associations. It took over the trade unions, the cooperative societies, the professional societies. By the late 1920's all political groupings, including former socialist parties, were gone and religious institutions had been placed under firm state control.

Professor Fainsod of Harvard University, a leading American scholar of Soviet Russia, describes the "totalitarian formula" as follows:

The formula of totalitarian rule as it took shape under Stalin's ministrations was a complex one. It represented, in one aspect, a drive to safeguard his own security by obliterating all actual or potential competing centers of power. (Fainsod, Merle, *How Russia is Ruled*, p. 109.)

Referring to Stalin's own words, Fainsod says:

. . . It (the Communist Party) must transform "each and every non-Party organization of the working class into an auxiliary body and transmission belt linking the Party with the class." The leadership of the Party must be asserted in trade unions, cooperatives, Soviets, and every other form of mass organization. "The highest expression of the leading role of the Party here in the Soviet Union. . . ." Stalin proudly proclaimed, "is the fact that not a single important political or organization question is decided by our Soviet and other mass organizations without guiding directions from the Party." (*Id.*, p. 127.)

Professor Fainsod describes as follows the right of association in the Soviet Union:

Freedom, in the Soviet constitutional lexicon, is the duty to ratify the policies of the ruling group and not to criticize them. "The right to unite in public organizations" (guaranteed in Article 126 of the Soviet constitution) is subject to the same qualification. It is the right to join organizations which the regime has established and which it approves. (*Id.*, p. 320.)

The same complete suppression of free organizations also occurred in Nazi Germany. In a chapter on "Hitler's Machine" in "They Wanted War," Otto D. Tolischus said (pages 143-4):

Before Hitler, Germany was a federal, democratic republic of some twenty States—the fourth biggest democracy in the world. In the fall of 1938 it was a unitary, centralized, authoritarian, totalitarian, racial, one-party Führer State, in which all self-government had been abolished. . . .

It was totalitarian because it undertook to control, supervise and direct, not only politics, but also all other phases of human life—capital and labor; producer and consumer; industry, trade, commerce and the professions; agriculture, religion and education; art, literature, the radio and the press; sport, charity, *every organization and association*, and, to an increasing extent, even family life. (Emphasis added.)

The campaign to suppress the NAACP is thus a move away from democracy and toward totalitarianism. Even in the South many observers have felt this keenly. The *Tampa* (Florida) *Tribune* declared editorially that efforts to outlaw the NAACP are "patently repressive" and violate the "democratic concept that people may band together for any lawful purpose, whether offensive to majority customs or not." The resolution of the Georgia Board of Education barring NAACP members from teaching was described by the Right Rev. Randolph O. Claiborne, Jr., Episcopal bishop of North Georgia, as "an effort to bring about state control of thought, opinion an expression that lines up with Nazi Germany or Communist Russia." The Richmond Ministers' Association condemned recent Virginia legislation in "A Statement of Conviction on Race." The first principle set forth in that Statement is:

First, we believe that within the context of American freedom, the attempt by the Governor and the Legislature to restrict discussion or orderly agitation by persons interested in current race problems is contrary to our traditional concepts of civil and religious liberty, and that Public Law No. 60 passed by the Special Session of the Legislature in 1956 should be promptly rescinded.

The statement warns that "the Legislature has taken long strides toward a vindictive, dictatorial way of government, foreign to our traditions. . . ."

National organizations have also warned of the threat to freedom of association in the Southern attack on the NAACP. In a resolution denouncing the attack, the Administrative Committee of the American Jewish Congress said, in October 1956:

The democratic process of popular government depends on the existence of voluntary organizations. Wherever they are proscribed, constitutional freedoms are abrogated. And it matters not whether the proscription is accomplished by outlawry, exorbitant fines or exposure of the identity of members and supporters to a hostile community.

In the same month, Msgr. George C. Higgins, Director of the Social Action Department of the National Catholic Welfare Council, said:

The time has come for law-abiding citizens of the United States—whatever their opinion of the NAACP—to rally to its defense in those states where its very right to existence as an organization is being

challenged not merely by private individuals but by government itself. . . . One does not have to be a supporter or admirer of NAACP to recognize that those states which are trying to outlaw the organization by administrative ruling or by legislative fiat are clearly violating one of the most fundamental principles of the natural law in the field of political action. That principle is the freedom of association. . . .

One final aspect of the attack on the NAACP must be mentioned—perhaps the gravest in its potentialities. Laws are being distorted from their true purpose, oppressive investigations made, prosecutions started and penalties imposed, not in the normal course of law enforcement but to serve an ulterior purpose. In order to silence organized dissent, the NAACP and its leaders are subjected to requirements, tests and searches not applied to others. Anti-barratry and other laws are passed with the obvious intent of using them discriminatorily. Little effort is made to conceal the fact that the full apparatus of government is being used to destroy or cripple the NAACP by any means that come to hand. In short, Southern officials have defied what the Supreme Court has described as “the mandates of equality and liberty that bind officials everywhere.” (*Nixon v. Condon*, 286 U. S. 73, 88.)

This abuse of legal power by state administrations portends the collapse of just government. It is the epitome of lawless rule. It is government by men, not by law. It is the feature that most clearly distinguishes tyranny from democracy.

A democracy must ever be on guard against abuse of the powers it entrusts to its officials. Despite the strictest constitutional guarantees, a judge, a policeman, a tax official will always have the opportunity to subject those whom he dislikes to special rigors. The victim of his powers may be an individual, an organization or a political party. His action may be within the letter of the law and yet be plainly oppressive.

A strong, vital democracy can prevent such abuses. A democracy that fails to prevent them surrenders its right to the name. The people of the Southern states, together with their fellow citizens in all parts of the country, must insure equal justice for the NAACP if they are to keep it for themselves.

CONCLUSION



WE CONCLUDE, AS WE BEGAN, WITH DE TOCQUEVILLE who spelled out so long ago why freedom of association is essential to democracy. With startling clarity, he saw further that, if the state bans any association, all are restrained. In words that could have been written yesterday, he said:

When some kinds of associations are prohibited and others are allowed, it is difficult to distinguish the former from the latter beforehand. In this state of doubt men abstain from them altogether, and a sort of public opinion passes current, that tends to cause any association whatsoever to be regarded as a bold and almost an illicit enterprise. (De Tocqueville, *supra*, p. 329.)

Every American has a stake in the struggle of the NAACP to survive and continue its work. Freedom of association, like the freedoms of speech, press and conscience which it implements, exists primarily for the benefit of the people at large. It protects the people's right to hear, to know, to be informed, so that they may properly exercise their rights and fulfill their obligations as citizens.

In sum, the racial issue in the South has assumed a new dimension. At first, only the constitutional guaranty of equality was challenged. Today, the fundamental rights of expression are in jeopardy. The attack on the NAACP is a reckless effort to preserve inequality by stifling freedom. All Americans face in this move a menace to their most treasured liberties. Hence, the right of the NAACP to survive and work for its program must be defended even by those who disagree with its purposes.

The American Jewish Congress therefore believes that all Americans should join in pursuit of the following objectives:

1. Action within the Southern states leading to repeal of legislation aimed at the National Association for the Advancement of Colored People and the abandonment of other oppressive actions against the NAACP.

2. Exercise by the President of the United States of the vast potentialities for moral leadership inherent in his office by condemning publicly the campaign of oppression and by using his influence to bring it to an end.

3. Action by the United States Department of Justice (a) to determine whether Federal laws have been violated by the acts of state officials restricting the NAACP's freedom of association, and (b) to intervene in behalf of the NAACP in the various proceedings in the Southern states that are designed to outlaw it, paralyze its lawful activities or curb advocacy of its program.

4. Action by the United States Congress to investigate the extent to which constitutional freedoms are threatened by these attacks and, on the basis of its findings, to use its legislative powers under the Fourteenth Amendment.

5. Action by all individuals and organizations concerned with the maintenance of constitutional liberty to come to the defense of the NAACP, recognizing in the attack on the Association a threat to the democratic freedom of all Americans.

May 31, 1957.

AMERICAN JEWISH CONGRESS

ISRAEL GOLDSTEIN	<i>President</i>	<i>Vice Presidents:</i>	
JUSTINE WISE POLIER	<i>Chairman</i>	MORTON M. BERMAN	<i>Chicago</i>
	<i>Executive Committee</i>	PHILIP S. BERNSTEIN	<i>Rochester</i>
MAX A. KOPSTEIN	<i>Chairman</i>	NATHAN L. EDELSTEIN	<i>Philadelphia</i>
	<i>Administrative Committee</i>	JULIAN FREEMAN	<i>Indianapolis</i>
HAROLD B. COHEN	<i>Secretary</i>	BENJAMIN S. KALNICK	<i>New York</i>
MAX DOFT	<i>Treasurer</i>	IRVING KANE	<i>Cleveland</i>
		PETER M. LEAVITT	<i>Brookline</i>
<i>Hon. Vice Presidents:</i>		SHAD POLIER	<i>New York</i>
HORACE M. KALLEN	<i>New York</i>	JOACHIM PRINZ	<i>Newark</i>
JAMES N. ROSENBERG	<i>New York</i>	I. H. PRINZMETAL	<i>Los Angeles</i>
IRVING MILLER	<i>Past President</i>	THELMA RICHMAN	<i>Philadelphia</i>

ISAAC TOUBIN *Executive Director*

STEPHEN WISE CONGRESS HOUSE

15 East 84th Street
New York 28, N. Y.

**PRINTED IN THE UNITED STATES OF AMERICA
BY MARSTIN PRESS, INC., NEW YORK CITY**





